

## **MEMORANDUM OF AGREEMENT**

### **CLASS 6 UNDERGROUND INJECTION CONTROL PROGRAM**

**Between**

**The West Virginia Department of Environmental Protection**

**And**

**The United States Environmental Protection Agency Region 3**

#### **I. INTRODUCTION**

The West Virginia Department of Environmental Protection (WVDEP) and the United States Environmental Protection Agency, Region 3 (EPA or Regional Administrator) have entered into this Agreement to delineate the responsibility of authority for all Class 6 injection well activities. Upon approval by the Regional Administrator, regulation of Class 6 injection well activities will be incorporated into the current West Virginia Underground Injection Control (UIC) Program. This Agreement establishes policies, responsibilities, and procedures pursuant to 40 CFR parts 124, 144, 145, 146, and Section 1421 of the Safe Drinking Water Act (SDWA) for the State of West Virginia UIC Program as authorized by Part C of the SDWA (P.L. 93-523 as amended; 42 U.S.C 300f et seq.) This Agreement comprises only part of the West Virginia UIC Program MOA with EPA. This Agreement addresses the West Virginia Class 6 UIC Program, implemented by the WVDEP.

This Agreement is entered into by the State of West Virginia and signed by ....., Director of the West Virginia Department of Environmental Protection and the United States Environmental Protection Agency, Region 3 and signed by ....., Regional Administrator. This Agreement shall become effective when approved by the Regional Administrator.

## **II. POLICIES AND AGREEMENTS**

### **A. Agency Responsibilities**

The lead agency of the West Virginia UIC Program is the West Virginia Department of Environmental Protection. As the lead agency, the WVDEP DWWM (Division of Water and Waste Management) receives the annual program grant and coordinates the State UIC Program, as designated by the Governor of the State. The WVDEP DWWM has authority over all Class 1 and 5 injection well activities. The WVDEP, Oil and Gas Division has authority over all Class 2 and 3 injection well activities. The WVDEP DWWM has Statutory Authority to regulate Class 6 injection well activities under West Virginia Statute 47 CSR 13. Each Division is responsible for administering the State program for the injection wells under its jurisdiction including, but not limited to, reports, permits, monitoring, compliance, and enforcement actions. This Agreement does not change the lead agency program administration status nor the original intent of the West Virginia UIC Program.

This Agreement is solely intended to add Class 6 injection wells to the current West Virginia UIC Program under DWWM.

### **B. Review and Modifications**

This Agreement may be modified upon the initiative of the WVDEP or EPA. Modifications will be in writing and will be signed by the Director of the WVDEP and the Regional Administrator. Modifications become effective when signed by both parties.

This Agreement will be reviewed annually as part of the annual program grant and State/EPA Agreement, now referenced as the Performance Partnership Agreement (PPA) process. The annual program grant and the PPA will be consistent with this Agreement and may not override this Agreement.

### **C. Conformance with Laws and Regulations**

The WVDEP DWWM will administer the West Virginia Class 6 program consistent with the State's submission for program approval, this Agreement, the SDWA, promulgated minimum requirements, State and federal laws and regulations, and any separate working agreements which will be entered into with the Regional Administrator in concurrence by the WVDEP DWWM as necessary for the full administration of the Class 6 UIC Program.

#### D. Responsibilities of Parties

The parties agree to maintain a high level of cooperation and coordination between the WVDEP DWWM and EPA staff to assure successful and efficient administration of the Class 6 UIC program. In this partnership, the Regional Administrator will provide to the WVDEP DWWM necessary technical and policy assistance on program matters. The Regional Administrator is responsible for keeping the WVDEPDWWM apprised, in a timely manner, of the meaning and content of federal guidelines, technical standards, regulations, policy decisions, directives, and any other factors which affect the Class 6 UIC Program.

The WVDEP DWWM will carry out the Class 6 UIC Program as outlined in the Class 6 primacy application and subsequent modifications to assume Class 6 primacy.

It will be the policy of the EPA and the WVDEP DWWM to minimize paperwork and interagency decision-making procedures and to make the best use of available manpower and funds so as to prevent duplication of effort and unnecessary delays to the extent allowable by law.

The strategies and priorities for issuance of permits, compliance monitoring, enforcement procedures, and implementation of technical requirements in the Class 6 UIC Program will be established in the state's program description, the annual PPA, or in subsequent working agreements. If requested by either party, meetings will be scheduled at reasonable intervals between the state and EPA to review specific operating procedures, resolve problems, or discuss mutual concerns involving the administration of the Class 6 UIC Program.

#### E. Sharing of Information

The WVDEP will timely inform the EPA of any proposed, pending, or enacted modifications to laws, regulations, or guidelines, and any judicial decisions or administrative actions, which might affect the WVDEP DWWM's Class 6 UIC Program and the WVDEP DWWM's authority to administer the Class 6 UIC Program.

Any information obtained or used by the WVDEP DWWM under its Class 6 UIC Program will be available to EPA upon request without restriction. If the information has been submitted to the WVDEP DWWM under a claim of confidentiality, the WVDEP DWWM will submit that claim to EPA when providing EPA such information. Any information obtained from the WVDEP DWWM and

subject to a claim of confidentiality will be treated in accordance with 40 CFR parts 2 and 40 CFR § 144.5. If EPA obtains information from the WVDEP DWWWM that is not claimed to be confidential, EPA may make that information available to the public without further notice. EPA will furnish to the WVDEP DWWWM the information in its files not submitted under a claim of confidentiality which the WVDEP DWWWM needs to implement its Class 6 Program. EPA will furnish to the WVDEP DWWWM information submitted to EPA under a claim of confidentiality, which will be subject to conditions found in 40 CFR part 2.

#### F. Duty to Revise Program

As stated in 40 CFR § 145.32(e), within 270 days of any amendment to any regulation promulgated at 40 CFR part 124, 144, 145 or 146 revising or adding any requirement respecting State UIC programs, the WVDEP must submit notice to EPA showing that the State program meets the revised or added requirements.

#### G. Duration of Agreement

This Agreement will remain in effect until such time as State primacy enforcement responsibility is returned to EPA by the State, or withdrawn by EPA, according to the provisions of 40 CFR § 145.34.

#### H. General Provisions

Nothing in this Agreement is intended to affect any UIC Program requirement, including any standards or prohibitions, rules, regulations, or policies, established by the WVDEP, as long as the State requirements are no less stringent than or are deemed equally protective as:

- I. Any set forth in the Class 6 UIC regulations; or
- ii. Other requirements or prohibitions established under the SDWA or applicable regulations.

Nothing in this Agreement shall be construed to limit the authority of the EPA to act pursuant to Sections 1421, 1422, 1423, 1424, 1425, 1431, or other sections of the SDWA.

### **III. PERMITTING**

#### **A. General**

The WVDEP DWWM is responsible for all Class 6 injection well permitting procedures as detailed in the approved Class 6 UIC Program Description, and pursuant to State and Federal laws, rules, and regulations.

Permits for Class 6 injection wells will be issued under the authority of West Virginia Water Quality Rules and Regulations 47CSR 13 - Underground Injection Control. Class 6 injection well permits will be issued by the WVDEP DWWM.

Permits issued by the WVDEP DWWM shall be in compliance with State and Federal requirements. All Class 6 permits shall meet the public participation requirements at 40 CFR parts 25 and 124, interstate coordination requirements at 40 CFR § 146.82(b), and permitting procedures at 40 CFR part 124 for Class 6 wells.

#### **B. Class 6 Injection Depth Waivers**

The WVDEP DWWM shall provide all information received through the injection depth waiver application process described in 40 CFR § 146.95, to the Regional Administrator. Based on the information provided, the Regional Administrator will provide written concurrence or non-concurrence regarding waiver issuance. If the Regional Administrator is unable to provide written concurrence or nonconcurrence within ninety (90) days of the WVDEP DWWM's submittal, the Regional Administrator will notify the WVDEP DWWM in writing to request additional information to support a decision and/or provide a date beyond ninety (90) days by when he/she expects to make a decision. The WVDEP DWWM shall not issue a Class 6 injection depth waiver without receipt of written concurrence from the Regional Administrator.

#### **C. Post-Injection Site Care and Site Closure**

The state and EPA agree to consult on any alternative post-injection site care timeframes (other than the 50-year default timeframe required by 40 CFR § 146.93) if an owner or operator can demonstrate during the permitting process that an alternative post-injection site care timeframe is appropriate and ensures non-endangerment of USDWs. Pursuant to 40 CFR § 145.1(g), nothing in this Agreement precludes the state from adopting or enforcing requirements which are more stringent or more

extensive than those required under federal regulations, and if the state program has a greater scope of coverage than required by Federal law, the additional coverage is not part of the federally approved program.

#### D. Compliance Schedule and Reports

The Director agrees to establish compliance schedules in permits where appropriate and to require periodic reporting on compliance with compliance schedules and other permit conditions.

#### E. Environmental Justice

Consistent with its Environmental Justice Policy, the WVDEP DWWM agrees to examine the potential risks of a proposed Class 6 well to identify, and address any particular impacts on minority and low-income populations.

### **IV. COMPLIANCE MONITORING**

#### A. General

The WVDEP DWWM will operate a timely and effective compliance monitoring system to track compliance with permit conditions and program requirements as outlined in the Class 6 UIC Program Description. For purposes of this Agreement, the terms "compliance monitoring" or "compliance evaluation" will refer to all efforts associated with determining compliance with Class VI UIC Program requirements.

#### B. Compliance Schedule

The WVDEP DWWM agrees to maintain procedures to receive, evaluate, retain, and investigate all notices and reports that are required by permit compliance schedules and program regulations. These procedures will also include the necessary elements to investigate the failure of persons required to submit such notices and reports. The WVDEP DWWM will initiate appropriate compliance actions when required information is not received or when the reports are not submitted.

#### C. Review of Compliance Reports

The WVDEP DWWM will conduct a timely and thorough review of all such reports to determine compliance status. The WVDEP DWWM will operate a tracking system to determine if:

- i. The reports required by permits and program regulations are submitted;

- ii. The submitted reports are complete and accurate; and
- iii. The permit conditions and program requirements are met.

The reports and notices will be evaluated for compliance status in accordance with the State compliance program and the program requirements.

#### D. Inspection

The WVDEP DWWM agrees to have inspection and surveillance procedures to determine compliance or noncompliance with the applicable requirements of the Class 6 UIC Program. Surveys or other methods of surveillance will include targeting to identify persons who have not complied with permit applications or other program requirements. Any compilations, index, or inventory obtained for such facilities or activities shall be made available to the Regional Administrator upon request.

The WVDEP DWWM shall conduct periodic inspections of the facilities and activities subject to regulatory requirements. These compliance monitoring inspections will be performed to assess compliance with all Class 6 UIC Program requirements and include selecting and evaluating a facility's monitoring and reporting program. These inspections will be conducted to determine compliance or noncompliance with the issued permits, to verify the accuracy of information submitted by operators in reporting forms and monitoring data, and to verify the adequacy of sampling, monitoring, and other methods to provide the information. These inspections may be announced or unannounced.

#### E. Information from the Public

The WVDEP DWWM shall provide the opportunity for the public to submit information on violations, and to have procedures for receiving, investigating, and ensuring proper consideration of the information.

#### F. Authority to Enter

The WVDEP DWWM (and other Division designees) engaged in compliance monitoring and evaluation shall have access to and the authority to enter any site or premises subject to regulation or to review and copy the records of relevant program operations where such records are kept.

#### G. Admissibility

Any investigatory inspections shall be conducted, and samples and other information collected in a manner to provide evidence admissible in an enforcement proceeding or in court.

### **V. ENFORCEMENT**

#### A. General

The WVDEP DWWM is responsible for taking timely and appropriate enforcement action against persons in violation of Class 6 UIC Program requirements, permit conditions, compliance schedules, and technical requirements. This includes violations detected by state or federal inspections.

The EPA will be notified of any enforcement actions taken by the WVDEP DWWM. Failure by the WVDEP DWWM to initiate appropriate enforcement action against a substantive violation may be the basis for EPA's determination that the WVDEP DWWM has failed to take timely enforcement action. Such a determination may result in EPA filing an action to enforce the State's rules in accordance with Section 1423 of the SDWA, but conference will occur between both parties prior to this action.

#### B. Enforcement Mechanisms

The WVDEP DWWM shall have the mechanism to restrain immediately and effectively any person engaging in any unauthorized activity or operation, which is endangering or causing damage to public health or the environment as applicable to the program requirements. The State shall also have the means to sue in courts of competent jurisdiction to prohibit any threatened or continuing violation of any UIC Program requirement. Additionally, the State is authorized to sue to recover civil penalties and criminal remedies as established in West Virginia Code 22-11-22 and West Virginia Code 22-11-24.

The WVDEP will proceed in any enforcement action against persons in violation of West Virginia Code 22-11-22 and 22-11-24, any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under West Virginia Code 22-11-22 and 22-11-24; any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under West Virginia Code 22-11-22 and 22-11-24, or any permit condition, rule, order, limitation, or other



applicable requirement implementing West Virginia Code 22-11-22 and 22-11-24, resulting in any adverse impact to waters of the State.

#### C. EPA Enforcement

Nothing in this Agreement shall affect EPA's authority or responsibility to take enforcement actions under Sections 1423 and 1431 of the SDWA. The State has primary enforcement responsibility for the State UIC Program. EPA will not take enforcement actions without providing prior notice to the State and otherwise complying with Sections 1423 and 1431 of the SDWA and all applicable regulations.

#### D. Assessment of Fines

The WVDEP DWWM agrees to assess civil penalties in amounts appropriate to the violation as required in West Virginia Code 22-11-22 and 22-11-24.

### **VI. EPA OVERSIGHT**

#### A. General

EPA shall oversee the WVDEP DWWM's administration of the Class 6 UIC Program on a continuing basis to assure that such administration is consistent with this Agreement, the program MOA, the state UIC grant application, and all applicable requirements embodied in current regulations, statutes, and federal law. In addition to the specific oversight activities listed in this section, EPA may from time to time request pertinent information related to the oversight of the Class 6 UIC Program, and the WVDEP DWWM will submit and provide access to files necessary for evaluating the WVDEP DWWM's administration of the Class 6 UIC Program.

#### B. Immediate Reporting of Noncompliance

The WVDEP DWWM will notify the Regional Administrator, of any major, imminent hazard to public health resulting from the endangerment of an underground source of drinking water of the State by Class 6 injection well activities.

#### C. Program Reports

The WVDEP shall submit program reports to the Regional Administrator in accordance with 40 CFR § 144.8. All Class 6 program reports shall be consistent with reporting requirements set forth in 40 CFR § 146.91 and shall be submitted to the Regional Administrator in accordance

with 40 CFR § 144.8. The reports are to be submitted quarterly using the specified 7520 reporting forms and include a narrative. Federal requirement 40 CFR § 146.9 1(e) requires that regardless of whether a State has primacy enforcement responsibility, owners or operators must submit all required reports, submittals, and notifications under Subpart H of part 146 to EPA in an electronic format approved by EPA. Additional State regulations require the owner or operator to submit reports, submittals, and notifications to the WVDEP. In order to assure both the State, as the primacy authority, and EPA, as the oversight authority, have consistent data throughout program implementation, the WVDEP DWWM agrees to submit to EPA or allow EPA viewing access to all Class 6 reports, submittals, and notifications submitted to the State. The WVDEP will assist the EPA in owner or operator compliance with 40 CFR § 146.9 1(e) by submitting to EPA or allowing EPA viewing access to all required reports, submittals, and notifications under Subpart H of part 146 through the WVDEP DWWM's database in an electronic format approved by EPA.

#### D. Quarterly Program Reports

The WVDEP DWWM shall submit to the Regional Administrator quarterly program reports as specified in 40 CFR § 144.8(a).

Quarterly reports will be submitted in accordance with the following schedule:

Quarter	Report Due to Regional Administrator
January, February, March	April 30
April, May, June	July 30
July, August, September	October 30
October, November, December	January 30

#### E. Annual Program Reports

The WVDEP DWWM shall submit an annual program report as specified by 40 CFR § 144.8 to the Regional Administrator sixty (60) days after the end of the federal fiscal year. The report is for the period of October 1 through September 30 (federal fiscal year) and will consist of the following:

A well inventory consisting of the facility name and ID, location, well type, and well status.

ii. A written summary of the major program activities completed and in progress

during the fiscal year as identified in the work plan.

The WVDEP DWWM will provide the EPA any information or data necessary to assist in the development of the State/EPA PPA.

#### F. Major Facilities

Major facilities will include: All Class 6 Facilities.

#### G. Aquifer Exemptions

Other than EPA approved aquifer exemption expansions that meet the criteria for exempted aquifers, new aquifer exemptions shall not be issued for Class 6 injection well activities. Even if an aquifer has not been specifically identified by the WVDEP DWWM, it is an underground source of drinking water if it meets the definition at 40 CFR § 144.3.

#### H. Mechanical Integrity

The WVDEP DWWM may allow the use of a test to demonstrate mechanical integrity other than those listed in the Class 6 UIC Program description. Any alternative mechanical integrity test must receive written approval from the US EPA Administrator prior to implementation and be consistent with the requirements of 40 CFR § 146.89(e).

#### I. Inspection and Surveillance by EPA

Provision may be made within the context of this Agreement for EPA to select facilities and activities within the State for EPA inspection. EPA will endeavor to conduct such inspections jointly with the State. The Regional Administrator may also choose to conduct inspections independently of the State's schedule. In such cases, the EPA will notify the WVDEP DWWM at least seven (7) days before any inspection that EPA determines to be necessary in order to allow coordination of scheduling and allow joint inspection. However, if an emergency exists, or for some reason, it is impossible to give advance notification, the Regional Administrator may waive advance notification and instead provide immediate notice of the facility inspection and will allow the State the opportunity to accompany EPA on any such inspection. The State understands not to inform the person whose property is to be entered of the pending inspection if the EPA waives advance notice and inspects the property and the State does not accompany the EPA.

The EPA will be responsible for attaining their own access to collect data, to inspect and photograph the facility, collect samples for analysis, review records, and perform any other function.

#### J. Annual Performance Evaluation

EPA will conduct, at least annually, performance evaluations of the West Virginia Class 6 UIC Program using the WVDEP DWWWM's quarterly reports, annual noncompliance reports, program reports, and other requested information to determine State program consistency with its UIC Program submission, the SDWA, and applicable State and federal regulations. The review will include progress towards program implementation, changes in the Class 6 UIC Program description, and efforts towards progress on program elements.

EPA will submit a summary of the evaluation findings to the WVDEP DWWWM outlining the deficiencies in program performance and recommendations for improving State operations. The report also might provide guidance for the development of an upcoming grant application, should federal funds become available for Class 6 activities. The WVDEP DWWWM will have thirty (30) working days from the date of receipt to concur with or comment on the findings and recommendations.

**VII. SIGNATURES**

IN WITNESS WHEREOF, the parties have executed this Agreement.

West Virginia WV Department of Environmental Protection

Director

United States Environmental Protection Agency, Region 8

Regional Administrator

Date

§22-11-22. Civil penalties and injunctive relief; administrative penalties.

§22-11-24. Violations; criminal penalties.

5.4. For Class 6 wells, the [area of review](#) is the region surrounding the [geologic sequestration project](#) where [USDWs](#) may be endangered by the injection activity. The [area of review](#) is delineated using computational modeling that accounts for the physical and chemical properties of all phases of the injected [carbon dioxide stream](#) and is based on available [site](#) characterization, monitoring, and operational data.